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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1620

JOHN R. BROWN, SR., M.D., *Petitioner-Appellant*

v.

HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL, *Respondent-Appellees*

Writ of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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PETITIONER'S ~~APPELLANT'S~~ REPLY TO RESPONDENTS' ~~APPELLEES'~~ ANSWER

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APPELLANT'S REPLY TO APPELLEES' ANSWER

REPLY TO THE ANSWER OF THE STATE OF TEXAS TO THE APPELLANT'S PETITION FOR CERTIORARI

The State of Texas, as it did before the Court of Appeals, pleads its neutrality, and then becomes an active adversary. The Houston Independent School District is an adversary without feeling the necessity of pleading any neutrality.

The State misunderstands the thrust of our pleading and our argument. On Page 3,* it states that our argument "rests upon the supposition that 'the theory of evolution is a basic tenet of atheistic theological thought,' and that though it may have been originally dubbed 'scientific', it has been so widely adopted by non-believers as to become inseparable from such non-belief." Admittedly, this is one element, but to say that it "rests" upon it is to thoroughly misstate our position. The evolutionist has become evangelical. He has secured Federal grants to write a series of textbooks so that evolution is presented in such a manner that the student is wholly indoctrinated. These text books with the manner of the teacher's instruction, and the Supervisor's supervision, and the consistent practice of both the State of Texas and the Houston Independent School District to have only evolution taught coupled with the intellectual snobbery and ridicule attendant with its teaching serve to present evolution as a religious fact to receive the homage of its believers. The absolute totality of the situation causes the violation of both the Establishment and Free Exercise Clauses.

We do not care that it is controversial, nor have we said—as the State represents us to say,—"that the theological adaptation of a scientific proposal *ipso facto* disqualifies the proposal as a scientific one." We are further misrepresented by the State in saying on Page 4 that we seek to enjoin "because it conflicts with his religious belief." This part of our position, stated without the other part of our position, so misstates it, that it cannot be recognized. Evolution has become a religious doctrine and by the totality of the religious manner of its teaching, it violates the Establishment Clause, the Free Exercise of

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* Page reference follow the State's rough draft pagination.

our religion, and our Freedom of Speech. Once more, on Page 6, the State represents that we are objecting merely because certain views are "distasteful." Then, as the ultimate example of the State's total lack of the grasp of the thrust of our argument, is its comparison of our position with "old math" and "new math". Neither new math nor old math is a religious theory, taught as a religious theory, believed on as a religious theory, nor received up into the glory of certain academic circles as a religious theory. One does not go through either new or old math and come out with a religious philosophy of living! But the religious theory of evolution invades not only the sciences, but history, economics, social studies and philosophy as well. Before the State of Texas proclaims its neutrality, it should examine more closely its practice. If this be neutrality, then give me an adversary!

We further take strong exception to the statement on Page 7 which implies that our position would have said that the school system in Wisconsin include Amish attitudes in its teaching program, or shut the schools down. The State basically is charging us with its self-interpreted result of what we pray for. The school system could not give what the Amish asked for. Their remedy was withdrawal not exemption, and the state opposed it. The school system can give what we ask for, and what Mr. Justice Clark in *Schempp* said was acceptable—that is, *objectivity*. It is the language of *Schempp* that says exemption is unconstitutional. The only viable remedy is for the State, in fact, in addition to their assertions, to become neutral. The State refers to Plaintiff-Appellant's position as "his own concept" regarding the origin of man. This type of thinking is exactly the type the student presently has to cope with. Evolution is truth, and anything else is someone's "own concept." The State of Texas seems

to be totally unaware of how many scientists question evolution, how many more challenge it, and how many more disown it, and what excellent evidence opposes it. But the State says "Compete". The State's attitude is strongly reminiscent of the White man in the 1940's saying to the Black man in the South, "Compete". How can one compete when the system is structured against you? That is exactly what the Petition for Certiorari is all about. We want the system restructured to the extent that there is no Establishment of Religion—and so that in the free flow of ideas, there can be competition for the minds of the children.

The State says we cannot lawfully do it. Segregation may have been lawful under the existing structure, but this Court said it was unconstitutional.

On pages seven and eight, the State talks about classification as religious or secular. The State, seemingly, has never grasped that there is a third alternative. And that is what we have pled: The secular by being taught alone, and by the manner of its teaching by its devotees has become a religious doctrine Established, infringing on the Free Exercise of our religion, and the Freedom of our Speech.

The State talks about Facts and Conclusions in the same vein that it talks about religious and secular. It is "either-or" with the State, and no middle ground. Fact: The State is not neutral. Dr. J. W. Edgar of the State admitted it. This is also a conclusion. Fact: Dr. J. W. Edgar admitted that there is a "Consistent practice" in having only evolution in school books. This is also a conclusion. Fact: Dr. J. W. Edgar felt that teaching both was better than Exemption. The State's educator does not like

exemption, even though the State's Attorney does. One could also call this a conclusion. There was no opportunity to amend the Petition, nor any opportunity to further discover for facts *that are basically in the possession of the defendants.* We conclude from his actions. The specifics are the books that we can introduce into evidence, the Supervisory instructions, the testimony of teachers, students, faculty, and supervisory personnel, and the comment of expert witnesses on this, and the further testimony of scientific expert witnesses concerning the competing scientific models of evolutionism and creationism. The Defendant wants in our petition what we want the trial for. However, there are enough facts, and more, in both Plaintiff's Petitions as well as in Intervening Plaintiff's Motion for New Trial to lift their position above the "conclusory" charge of the State.

In replying to the State's raspberry analogy on Page 11, we would respond that if the State's Established Religion —whether they wanted to admit it or not—was eating raspberries, and the State proceeded to stuff those raspberries down the throats of school children to the exclusion of all other food, which said other food was a part of the school children's religion, then we would consider filing an Amicus Curiae Brief in that case on the side of the school children protesting said stuffing. Since we are not concerned with raspberry containers, but rather with what the minds of children contain, we have alleged our burden under the Clauses of the First Amendment.

On Page 12, the State once more wishes us to fight the battle of classification on the battleground of his categories, not recognizing that there is another. The burden is not arbitrariness or capriciousness. The burden is whether or not the four tests of neutrality are violated,

and whether or not there is compulsion or coercion with reference to the Free Exercise Clause. The State has attacked our Petition For Certiorari because it first misunderstood it. In this misunderstanding, it misstated and misclassified our position. Had the State investigated more thoroughly its own practices, and understood our position, it might have achieved the neutrality it espoused.

REPLY TO THE ANSWER OF THE HOUSTON INDEPENDENT SCHOOL SYSTEM TO APPELLANT'S PETITION FOR CERTIORARI

Although the State of Texas has answered on the lines of their arbitrary either-or type of classification, the Houston Independent School System answers by misapplying three cases. The first is *Epperson v. Arkansas,* 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 2288 (1968). The case in effect struck down a State statute making the teaching of evolution a criminal offense. From this, H.I.S.D. concludes that the objective teaching of both scientific models of thought in a manner that established no particular form of religion would be violative of *Epperson.* Somewhere, H.I.S.D. slipped a minor premise. We again assert that the doctrine of Neutrality with its four tests as set out in our Petition, with the further test of objectivity of *Schempp,* and the intent and language of *Yoder* control.

The next misapplied case is *Barusca v. State of Missouri,* 332 F. Supp. 275 (E.D. Mo., affirmed Three Judge Court, 1971). The petitioners seemingly wanted money from the state to aid them religiously or a credit on their taxes. The implication that that is what we want or something similar is plainly not so. We feel that we have made it abundantly clear that we do not want either religious

thought established as the State's religion—the position that evolution now holds. Seemingly neither the State nor H.I.S.D. understands that *objectivity* is *not establishment.* Nor have they understood the converse that the lack of objectivity coupled with the manner of teaching in Evolution's case is Establishment of Religion and Infringement of the Free Exercise of ours.

Lastly, *Cornwell v. State Board of Education,* 314 F. Supp. 340 (D. Md. 1969 aff'd 428 F.2d 471 (4th Cir.) cert. denied 200 U.S. 942, 91 S.Ct. 240 (1970)), deals with sex education being objected to by the petitioners in that case. This case at bar cannot be compared to sex education anymore than it can be compared to old math vs. new math or raspberry containers. There are many places where sex education differs. There is no great body of scientific knowledge arrayed against sex, neither was the State alleged to be teaching it in a manner where the teaching of it became a religion. If the State in its sexual education courses had attempted to persuade the young students to be male and female prostitutes to the glory of the goddess Diana, then, the Court would surely have taken a different tack.

SUMMARY

Perhaps our position can be illustrated better than further characterization can describe it. Not long ago, it actually happened that a father asked his son who was in the eighth grade of H.I.S.D. how he felt about evolution. His reply was that he did not believe it. Then after a few moments, he said, "If I did, I couldn't believe in God. Isn't that right, Dad." It is our contention that the placing of the child in this kind of dilemma by the religious manner of teaching of evolution is the Establishment of

Religion and an unwarranted infringement upon the Free Exercise Clause in addition to the abridgement of Free Speech.

If Evolution were taught objectively, his answer might have been, "I don't believe in it Dad, because it violates the Second Law of Thermodynamics, and it is inconsistent with certain relative facts of geology, astronomy, and genetics." One's religious faith should not be placed in jeopardy merely because another belief wishes to evangelize by using the means of the State. Evolution as it is taught, destroys faith, and the State has become the adversary of all those conservative religious beliefs that would oppose it.

PRAYER

We once more pray this Court that this petition for the Writ of Certiorari be granted, or in the alternative, the remedy that your petitioner prayed for in their petition be granted, or in the alternative that the case be remanded to the Court for a trial upon the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Appellant's Reply Brief has been served on Mrs. Leona Weber pro se, 6801 Avenue C, Houston, Texas 77011; Mr. Kelly Frels, Attorney for Appellees Houston Independent School District, Et al, 1808 First City National Bank Bldg., Houston, Texas 77002; Mr. Bruce Youngblood, Assistant Attorney General of Texas, Attorney for the State Board of Education, the State Commissioner of Education, and the Central Education Agency, Box 12548, Capitol Station, Austin, Texas by United States Mail with sufficient postage thereon this the 28th day of May, 1974, A.D.

HERBERT L. COFFMAN